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EXTRAORDINARY

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PART II — Section 2

प्राधिकार से प्रकाशित

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

LOK SABHA

The following Bill was introduced in Lok Sabha on 14th May, 2012:—

BILL NO. 58 OF 2012

A Bill to regulate public procurement with the objectives of ensuring transparency, accountability and probity in the procurement process, fair and equitable treatment of bidders, promoting competition, enhancing efficiency and economy, maintaining integrity and public confidence in the public procurement process and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Sixty-third Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Public Procurement Act, 2012.

Short title
and com-
mencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

Definitions.

2. In this Act, unless the context otherwise requires,—

- (a) "bid" means an offer made in pursuance of an invitation by a procuring entity and includes any tender, proposal or quotation;
- (b) "bidder" means any person, including a consortium (that is association of several persons, or firms or companies), participating in a procurement process with a procuring entity;
- (c) "bidding document" means a document issued by the procuring entity, including any amendment thereto, that sets out the terms and conditions of the given procurement and includes the invitation to bid;
- (d) "bidder registration document" means a document issued by a procuring entity, including any amendment thereto, that sets out the terms and conditions of registration proceedings and includes the invitation to register;
- (e) "bid security" means any security provided to the procuring entity by bidders for securing the fulfilment of any obligation in terms of the provisions of the bidding documents;
- (f) "Central Purchase Organisation" means a procuring entity which is authorised by the Central Government by an order, made in this behalf, to make procurement for one or more procuring entities or to enter into rate contracts or framework agreements for procurement by other procuring entities;
- (g) "electronic reverse auction" means an online real-time purchasing technique utilised by the procuring entity to select the successful bid, which involves presentation by bidders of successively lowered bids during a scheduled period of time and the automatic evaluation of bids;
- (h) "framework agreement" means an agreement between a Central Purchase Organisation or procuring entity with one or more bidders, valid for a specified period of time, which sets out terms and conditions under which specific procurements can be made during the term of the agreement and may include agreement on prices which may be either pre-determined or be determined at the stage of actual procurement through competition or a process allowing their revision without further competition;
- (i) "goods" includes all articles, material, commodity, livestock, furniture, fixtures, raw material, spares, instruments, machinery, equipment, industrial plant, vehicles, aircraft, ships, railway rolling stock or such other category of goods purchased or otherwise acquired by a procuring entity and includes services which are incidental or consequential to the supply of such goods, such as, transportation, insurance, installation, commissioning, training and maintenance;
- (j) "invitation to bid" means a document and any amendment thereto published by the procuring entity inviting bids relating to the subject matter of procurement and includes notice inviting tender and request for proposal;
- (k) "invitation to pre-qualify" means a document including any amendment thereto published by the procuring entity inviting offers for pre-qualification from prospective bidders under section 13;
- (l) "invitation to register" means a document including any amendment thereto published by the procuring entity inviting offers for bidder registration from prospective bidders under section 14;
- (m) "notification" means a notification published in the Official Gazette;
- (n) "offset" means any condition imposed on a bidder in relation to a particular procurement so as to encourage local development by means of domestic content,

transfer of technical knowhow, licensing of technology, skill development, counter-trade, investment or other similar requirements;

(o) "prescribed" means prescribed by rules made by the Central Government under this Act;

(p) "pre-qualification procedure" means the procedure set out to identify, prior to inviting bids, the bidders that are qualified;

(q) "pre-qualification document" means the document including any amendment thereto issued by a procuring entity, which set out the terms and conditions of the pre-qualification proceedings and includes the invitation to pre-qualify;

(r) "procurement" or "public procurement" means acquisition by purchase, lease, licence or otherwise of goods, works or services or any combination thereof, including award of Public Private Partnership projects, by a procuring entity, whether directly or through an agency with which a contract for procurement services is entered into, but does not include any acquisition of goods, works or services without consideration, and the term "procure" or "procured" shall be construed accordingly;

(s) "procurement contract" means a contract entered into between the procuring entity and a successful bidder relating to the subject matter of procurement;

(t) "procurement process" means the process of procurement extending from the issue of invitation to pre-qualify or to register or to bid, as the case may be, till the award of the procurement contract;

(u) "procuring entity" means an entity referred to in sub-section (2) of section 3;

(v) "prospective bidder" means any person including a consortium (that is, association of several persons or firms or companies) likely to be a bidder;

(w) "Public Private Partnership" means, an arrangement between the Central Government, statutory entity or any other Government owned entity on one side and a private sector entity on the other, for the provision of public assets or public services or both, through investments being made or management being undertaken by the private sector entity, for a specified period of time, where there is defined allocation of risk between the private sector and the public entity and the private entity receives performance linked payments that conform (or are benchmarked) to specified and pre-determined performance standards, measurable by the public entity or its representative;

(x) "rate contract" means a framework agreement which also specifies the price for the supply of a subject matter of procurement;

(y) "registered bidder" means any bidder who is on a list of registered bidders of the procuring entity or a Central Purchase Organisation maintained under section 14;

(z) "service" means any subject matter of procurement other than goods or works, except those incidental or consequential to the service, and includes physical, maintenance, professional, intellectual, consultancy and advisory services or any other service classified or declared as such by a procuring entity but does not include appointment of an individual made under any law, rules, regulations or order issued in this behalf;

(za) "subject matter of procurement" means any item of procurement whether in the form of goods, services or works or a combination thereof;

(zb) "works" includes all works associated with site preparation, construction, reconstruction, demolition, repair, maintenance, or renovation of (i) buildings, installations or other structures, (ii) railways, roads, highways, ports, airports or other infrastructures, (iii) any construction project; or any construction work relating to excavation, drilling, installation of equipment and materials; (iv) services incidental or consequential to the works.

Act to apply to all procuring entities.

3. (1) The provisions of this Act shall apply to all procuring entities referred to in sub-section (2).

(2) For the purposes of this Act, the following shall be the procuring entities, namely:—

(a) any Ministry or Department of the Central Government or a unit thereof or its attached or subordinate office to which powers of procurement have been delegated;

(b) any Central Public Sector Enterprise or Undertaking owned or controlled by the Central Government;

(c) any company in which more than fifty per cent. of the paid-up share capital is held—

(i) by the Central Government; or

(ii) by one or more companies in which the Central Government holds more than fifty per cent. of the paid-up share capital; or

(iii) by the Central Government and one or more companies in which the Central Government holds more than fifty per cent. of the paid-up share capital;

(d) any body established or constituted under the Constitution whose expenditure is met from the Consolidated Fund of India;

(e) any body or board or corporation or authority or society or trust or autonomous body (by whatever name called) established or constituted under an Act of Parliament or a body owned or controlled by the Central Government;

(f) any other entity which the Central Government may, by notification, specify to be a procuring entity for the purpose of this Act, being an entity that receives substantial financial assistance from the Central Government in so far as the utilisation of such assistance towards procurement is concerned.

(3) The Central Government may, by notification, permit the procuring entities to carry out procurement, financed under the assistance from the multilateral development banks, bilateral development agencies, or foreign governments or pursuant to an inter-governmental agreement, in accordance with the procurement procedures stipulated in terms of such assistance or agreement:

Provided that before granting permission, the Central Government shall satisfy itself that the procurement procedures stipulated in terms of such assistance or agreement, are in consonance with the basic norms of public procurement specified in sub-section (1) of Section 5.

Provisions for certain procurements and procuring entities not covered under the Act.

4. (1) Notwithstanding anything contained in this Act, the provisions of Chapter II and sections 38 to 42 (both inclusive) shall not apply to:—

(a) any procurement, the estimated cost or value of which is less than fifty lakh rupees or such higher value as the Central Government may, by notification, specify, for different classes or categories of procurements or procuring entities;

(b) emergency procurement necessary for the management of any disaster, as defined in clause (d) of section 2 of the Disaster Management Act, 2005;

(c) procurement for the purposes of national security or on strategic considerations that the Central Government may, by general or special order, specify;

(2) The Central Government may make rules, consistent with the provisions of sections 5 and 6, regulating the procuring entities or the procurements covered under sub-section (1).

CHAPTER II

PRINCIPLES AND METHODS OF PROCUREMENT

A.—GENERAL PRINCIPLES OF PROCUREMENT

5. (1) The procuring entity shall, in relation to a public procurement, have the responsibility and accountability to,—

- (a) ensure efficiency, economy and transparency;
- (b) provide fair and equitable treatment to bidders;
- (c) promote competition;
- (d) ensure that the price of the successful bid is reasonable and consistent with the quality required; and
- (e) evolve mechanisms to prevent corrupt practices.

Basic norms
of public
procurement.

(2) Except as otherwise provided in section 4, every procuring entity shall carry out its procurement in accordance with the provisions of this Act and the rules made thereunder.

(3) Without prejudice to the provisions of this Act, different sets of rules may be made for different categories of procuring entities and procurements.

Explanation.—For the purpose of this sub-section,—

(a) "Category of procuring entities" include the Central Public Sector Enterprises, and such other entity as may by notification be specified by the Central Government;

(b) "Category of procurements" include the Goods, Works, Services, procurements for purposes of national security and on strategic considerations, entering into Public Private Partnerships, and such other procurement as may by notification be specified by the Central Government.

6. (1) No official of a procuring entity or a bidder shall act in contravention of such code of integrity as may be prescribed by the Central Government.

Code of
integrity for
procuring
entity and
bidders.

(2) The code of integrity referred to in sub-section (1) shall include provisions for—

(a) Prohibition of—

(i) making offer, solicitation or acceptance of bribe, reward or gift or any material benefit, either directly or indirectly, in exchange for an unfair advantage in the procurement process or to otherwise influence the procurement process;

(ii) any omission, or misrepresentation that may mislead or attempt to mislead so that financial or other benefit may be obtained or an obligation avoided;

(iii) any collusion, bid rigging or anti-competitive behaviour that may impair the transparency, fairness and the progress of the procurement process;

(iv) improper use of information provided by the procuring entity to the bidder with an intent to gain unfair advantage in the procurement process or for personal gain;

(v) any financial or business transactions between the bidder and any official of the procuring entity;

(vi) any coercion or any threat to impair or harm, directly or indirectly, any party or its property to influence the procurement process;

(vii) obstruction of any investigation or auditing of a procurement process;

(b) disclosure of conflict of interest;

(c) disclosure by the bidder of any previous transgressions made in respect of the provisions of sub-clause (a) with any entity in any country during the last three years or of being debarred by any other procuring entity.

(3) Without prejudice to the provisions contained in Chapter IV, if the procuring entity comes to the conclusion that a bidder or prospective bidder, as the case may be, has violated the code of integrity, the procuring entity may take appropriate measures including—

- (a) exclusion of the bidder from the procurement process;
- (b) calling off of pre-contract negotiations and forfeiture or encashment of bid security;
- (c) forfeiture or encashment of any other security or bond relating to the procurement;
- (d) recovery of payments made by the procuring entity along with interest thereon at bank rate;
- (e) cancellation of the relevant contract and recovery of compensation for loss incurred by the procuring entity;
- (f) debarment of the bidder from participation in future procurements of the procuring entity for a period not exceeding two years under section 49.

Determination of need for procurement.

7. (1) In every case of a procurement to be made under this Act, the procuring entity shall first determine the need (including anticipated requirement) for the subject matter of procurement.

(2) While assessing the need under sub-section (1), the procuring entity shall, to the extent possible, take into account the estimated cost of the procurement and shall also decide on the following matters, namely:—

- (a) the scope or quantity of the subject matter of procurement, if determined;
- (b) limitation on participation of bidders in accordance with section 11, if any applicable, and justification thereof;
- (c) the method of procurement to be followed with justification thereof;
- (d) need for pre-qualification, if any;
- (e) offsets as may be required; and
- (f) any other matter as may be prescribed.

(3) The procuring entity shall maintain all documents relating to the determination of the need for procurement under sub-sections (1) and (2).

(4) The procuring entity may publish information regarding planned procurement activities for the forthcoming year or years on the Central Public Procurement Portal.

Explanation.—For the removal of doubts, it is hereby declared that the publication of information under this sub-section shall not be construed as initiation of a procurement process and cast any obligation on the procuring entity to issue bidding document or confer any right on prospective bidders.

Obligations related to value of procurement.

8. A procuring entity shall neither package nor divide its procurement or take any other action so as to limit competition among bidders or to avoid its obligations under this Act:

Provided that in the interest of efficiency, economy and timely completion or supply, a procuring entity may, for reasons to be recorded in writing, divide its procurement into appropriate packages.

9. (1) The description of the subject matter of procurement shall be set out in the pre-qualification document, bidder registration document and the bidding document, as the case may be, in such manner that—

Description of subject matter of procurement.

- (a) it meets the essential needs of the procuring entity;
- (b) to the extent practicable,—
 - (i) it is objective, functional, generic and measurable;
 - (ii) it sets out required technical, qualitative and performance characteristics;
 - (iii) it shall not indicate a requirement for a particular trade mark, trade name or brand;
- (c) it is in accordance with the guidelines as may be prescribed.

(2) Where applicable, the technical specifications shall, to the extent practicable, be based on the national technical regulations or recognised national standards or building codes, wherever such standards exist, and in their absence, be based on the relevant international standards:

Provided that a procuring entity may, for reasons to be recorded in writing, base the technical specifications on equivalent international standards even in cases where national technical regulations or recognised national standards or building codes exist.

10. (1) Subject to such rules as may be made by the Central Government in this behalf, every procuring entity shall indicate in the pre-qualification document, bidder registration document or bidding document, as the case may be, the expected time limit for completion of various stages of the process of procurement.

Time limit for processing of procurement.

(2) The procuring entity shall endeavour to adhere to the time limit specified under sub-section (1) and shall record reasons for any modification of such time limit.

11. (1) The procuring entity shall not establish any requirement aimed at limiting participation of bidders in the procurement process that discriminates against or amongst bidders or against any category thereof, except when so authorised or required under the provisions of this Act or the rules made thereunder, or under the provisions of any other law for the time being in force.

Participation of bidders.

(2) The Central Government may, by notification, provide for mandatory procurement of any subject matter of procurement from any category of bidders, or purchase preference in procurement from any category of bidders on any of the following grounds, namely:—

- (a) the promotion of domestic industry;
- (b) socio-economic policy of the Central Government;
- (c) any other consideration in public interest in furtherance of a duly notified policy of the Central Government:

Provided that the reason and justification for such mandatory or preferential procurement, the category of bidders chosen and the nature of preference given shall be specified in that notification.

(3) The procuring entity, at the time of inviting the participation of bidders in the procurement process shall declare whether participation of bidders is limited and the grounds for such limitation and such declaration may ordinarily be not altered subsequent thereto.

(4) Nothing in this section shall be construed as restricting the Central Government from imposing or enforcing measures limiting participation on account of the need—

- (a) to protect public order, morality or safety;

- (b) to protect animal life or plant life or the life of human beings and their health;
- (c) to protect intellectual property;
- (d) to protect the national security and strategic interests of India.

Qualifications of bidders.

12. (1) A procuring entity may determine and apply one or more of the requirements specified in sub-section (2) for a bidder to be qualified for participating in a procurement process.

(2) Any bidder participating in the procurement process shall —

- (a) possess the necessary professional, technical, financial and managerial resources and competence required under the bidding document, pre-qualification document or bidder registration document, as the case may be, issued by the procuring entity;
- (b) have filed tax returns to the Central Government as may be specified in the bidding document, pre-qualification document or bidder registration document;
- (c) (i) not be insolvent, in receivership, bankrupt or being wound up;
- (ii) not have its affairs administered by a court or a judicial officer;
- (iii) not have its business activities suspended; and
- (iv) not be subject to any legal proceedings for any of the foregoing reasons;
- (d) not have any of their directors and officers, convicted of any criminal offence related to professional misconduct or making of false statements or misrepresentations with respect to their qualifications to enter into a procurement contract, within a period of two years preceding the commencement of the procurement process, or not otherwise have been disqualified pursuant to debarment proceedings;
- (e) fulfil any other qualifications as may be prescribed.

(3) The procuring entity may require a bidder to provide such information or declaration as is necessary to make an evaluation in accordance with sub-section (1).

(4) The Central Government may prescribe the form and manner of the declaration to be submitted by the bidder to satisfy the requirements specified in clauses (b), (c) and (d) of sub-section (2).

(5) Any requirement pursuant to this section shall be set out in the pre-qualification document or bidder registration document, if any, and in the bidding document and shall apply equally to all bidders.

(6) The procuring entity shall evaluate the qualifications of bidders only in accordance with the requirements specified in this section.

Pre-qualification of bidders.

13. (1) A procuring entity may engage in a pre-qualification process, prior to inviting bids, for the purpose of identifying the bidders that are qualified.

(2) The pre-qualification shall be valid for such period as may be specified by the procuring entity in the pre-qualification document.

(3) The procuring entity shall invite bids from pre-qualified bidders during the period referred to in sub-section (2) and in case bids are not invited within such period, fresh pre-qualification shall be done before inviting bids.

(4) The pre-qualification of bidders shall ordinarily be for a single procurement:

Provided that during the period of validity of the pre-qualification under sub-section (2), the procuring entity may invite bids from the pre-qualified bidders for further requirements of the subject matter of procurement, if, it determines that engaging in fresh pre-qualification shall not result in enhanced competition.

(5) For the purpose of sub-section (1), a procuring entity shall invite offers from prospective bidders by giving wide publicity, in a manner as may be prescribed, to the invitation to pre-qualify and shall exhibit the particulars of the bidders that are qualified on the Central Public Procurement Portal.

(6) Where a procuring entity has undertaken a pre-qualification process under sub-section (1) in respect of any procurement, such pre-qualified bidders shall be entitled to continue in the procurement proceedings.

(7) The procuring entity shall identify the pre-qualified bidders in accordance with the provisions of section 12 and the criteria set out in the pre-qualification document.

(8) Every pre-qualification process shall be carried out in such manner and in accordance with such procedure, as may be prescribed.

14. (1) With a view to identify reliable bidders for a subject matter of procurement or a class of procurement, which may be commonly required across procuring entities or is required by a procuring entity on a recurring basis, a procuring entity may maintain a panel of registered bidders.

Registration of bidders.

(2) For the purpose of sub-section (1), a procuring entity may invite offers from prospective bidders by giving wide publicity in such manner as may be prescribed, and such bidders who fulfil the qualification specified in section 12 may be registered in such manner as may be prescribed by following the criteria set out in the bidder registration document.

(3) The procuring entities shall update the list of registered bidders by allowing potential bidders to apply for registration on a continuous basis or by inviting offers for registration at least once in a year.

(4) Where a procuring entity does not register bidders in respect of a subject matter of procurement, it may use the list of registered bidders of a Central Purchase Organisation, or any other procuring entity, if any for the purposes of the said procurement.

(5) The results of the registration process shall be intimated to the bidders and the list of registered bidders for the subject matter of procurement shall be exhibited on the Central Public Procurement Portal.

15. (1) Subject to the rules as may be made in this behalf, the bidding document shall contain—

Contents of bidding document.

(a) the description of the subject matter of procurement;

(b) in case of procurement of—

(i) goods, its specifications including the nature, quantity, time and place or places of delivery;

(ii) works, the nature and location or locations of the works;

(iii) services, the nature of the services and the location or locations where they are to be provided;

(c) the limitation for participation in terms of the provisions under section 11;

(d) the manner, date and time for presentation of bids;

(e) the criteria for evaluation of bids;

(f) the essential terms of the procurement contract;

(g) any other information which the procuring entity considers necessary for the bidders to submit their bids.

(2) The Central Government may prescribe the conditions to be included in the bidding document and model bidding documents for various types of procurements.

Single envelope and two envelope bids.

16. (1) Subject to the provisions of this Act and the rules made thereunder, a procuring entity may opt to—

(a) call for bids, if it is of the opinion that it is essential to evaluate the techno-commercial aspects before considering the financial aspect, in two envelopes, namely:—

(i) the techno-commercial bid containing the technical, quality and performance aspects, commercial terms and conditions; and

(ii) the financial bid containing the price and other financial details:

(b) call for bids, containing the techno commercial aspects and financial aspects including the price in one envelope, if all the elements are to be evaluated together:

Provided that in case of a procurement in which offsets are required, the bid relating to offsets may be called for in such manner as may be prescribed.

(2) In case the procuring entity calls for bids in accordance with the provisions of clause (a) of sub-section (1), the techno-commercial bid shall be opened and evaluated first, including evaluation based on the provisions specified in sub-section (2) of section 21, if applicable, and the financial bid of only those bids which have been found technocommercially acceptable, shall be opened and evaluated.

Time limit for submission of bids.

17. (1) While fixing the last date by which bids are to be submitted by the bidders, the procuring entity shall take into account—

(a) the reasonable time required for the bidders to prepare and submit their bids; and

(b) the time frame envisaged for procurement.

(2) Subject to the provisions of section 19, the maximum time as may be allowed for submission of bids shall be the same for all bidders.

Pre-bid clarifications.

18. (1) Any bidder may, in writing, seek clarifications from the procuring entity in respect of the bidding documents.

(2) The period within which the bidders may seek clarifications under sub-section (1) and the period within which the procuring entity shall respond to such requests for clarifications shall be specified in the bidding documents.

(3) All requests for clarification and responses thereto shall be intimated to all bidders and where applicable, shall be exhibited on the Central Public Procurement Portal.

(4) A procuring entity may hold a pre-bid conference to clarify doubts of potential bidders in respect of a particular procurement and the records of such conference shall be intimated to all bidders and where applicable, shall be exhibited on the Central Public Procurement Portal.

Modification to bidding document.

19. (1) In case any modification is made to the bidding document or any clarification is issued which materially affects the terms contained in the bidding document, the procuring entity shall publish or communicate such modification or clarification in the same manner as the publication or communication of the initial bidding document was made.

(2) In case a clarification or modification is issued to the bidding document, the procuring entity shall, before the last date for submission of bids, extend such time limit, if, in its opinion more time is required by bidders to take into account the clarification or modification, as the case may be, while submitting their bids.

(3) Any bidder who has submitted his bid in response to the original invitation shall have the opportunity to modify or re-submit it, as the case may be, or for sufficient reasons, withdraw such bid in case the modification to bidding document materially affect the essential terms of the procurement, within the period initially allotted or such extended time as may be allowed for submission of bids, after the modifications are made to the bidding document by the procuring entity:

Provided that the bid last submitted or the bid as modified by the bidder shall be considered for evaluation.

20. Subject to the terms and conditions as may be laid down in the bidding documents, submission of bids, bid securities, modification and withdrawal of bid, opening and evaluation of bids, including constitution of committees for those purposes shall be in accordance with the rules as may be prescribed.

Procedure relating to submission, opening and evaluation of bids.

21. (1) Save as otherwise provided in this Act or the rules made thereunder or in any other law for the time being in force, the evaluation criteria shall relate to the subject matter of procurement and may, as applicable, include—

Criteria for evaluation.

(a) the price;

(b) the cost of operating, maintaining and repairing goods or works;

(c) the time for delivery of goods, completion of works or provision of services;

(d) the characteristics of the subject matter of procurement, such as the functional characteristics of goods or works or the environmental characteristics of the subject matter;

(e) the terms of payment and of guarantees in respect of the subject matter of procurement;

(f) where relevant, quality based criteria such as the experience, reliability and professional and technical competence of the bidder and of the personnel to be involved in providing the subject matter of procurement.

(2) Where considered necessary, the procuring entity may also specify trials, sample testing and other additional methods of technical evaluation of a bid:

Provided that the requirement of such trials, sample testing or additional methods of evaluation shall be indicated in the bidding document and a record of such trials and testing shall be maintained in such manner as may be prescribed.

(3) As far as practicable, all non-price evaluation criteria shall be objective and quantifiable.

(4) The criteria for evaluation of bids, including whether the requirements specified in sub-section (2) of section 11 are applicable, shall be contained in the bidding documents.

(5) Where applicable, the relative weights to be attached to each criterion shall be specified in the bidding documents;

(6) No criteria or procedure, other than those mentioned in the bidding document, shall be used by the procuring entity in evaluating bids.

22. (1) A procuring entity shall exclude a bid if, the procuring entity determines that—

Exclusion of bids.

(a) the bidder is not qualified in terms of section 12; or

(b) the bid departs from the essential requirements specified in the bidding document; or

(c) the bid contains false information; or

(d) the bidder submitting the bid, his agent or anyone acting on his behalf, gave or agreed to give, to any official of the procuring entity or other governmental authority a gratification in any form, or any other thing of value, so as to unduly influence the procurement process; or

(e) a bidder, in accordance with the rules as may be made in this behalf, has a conflict of interest that materially affects fair competition or diligent performance of the procurement contract or framework agreement or is prejudicial to the interests of the procuring entity.

(2) A bid shall be excluded as soon as the cause for its exclusion is discovered.

(3) Every decision of a procuring entity to exclude a bid shall be for such reasons as may be recorded in writing.

(4) Every decision of the procuring entity under sub-section (3) shall be—

(a) communicated to the concerned bidder in writing;

(b) exhibited on the Central Public Procurement Portal.

Price negotiations. 23. Save as otherwise provided in section 32 or in such other circumstances and subject to such conditions as may be prescribed, no price negotiation shall be held by a procuring entity with a bidder with respect to a bid submitted by him.

Cancellation of procurement process. 24. (1) A procuring entity may, for reasons to be recorded in writing, cancel the process of procurement initiated by it—

(a) at any time prior to the acceptance of the successful bid; or

(b) after the successful bid is accepted in accordance with the provisions of sub-sections (4) and (5).

(2) After taking a decision to cancel the procurement, the procuring entity shall not open any bid or proposals and shall return such bids or proposals.

(3) The decision of the procuring entity to cancel the procurement and reasons for such decision shall be immediately communicated to all bidders that participated in the procurement process.

(4) If the bidder whose bid has been accepted fails to sign the procurement contract as may be required, or fails to provide the security as may be required for the performance of the contract or otherwise withdraws from the procurement process, the procuring entity shall cancel the procurement process:

Provided that the procuring entity, on being satisfied that the integrity of the procurement process has been maintained, may, for cogent reasons to be recorded in writing, award the contract to the next successful bidder in the following circumstances, namely:—

(a) where the successful bidder has withdrawn from the procurement process on account of a situation which constitutes a *force majeure*; or

(b) where the procuring entity determines that—

(i) cancellation of the procurement process shall result in insurmountable delay or substantial cost escalation; and

(ii) the procurement is of such critical nature that cancellation of the procurement process shall adversely impact the public interest.

(5) If a bidder is convicted of any offence under this Act in respect of a procurement process, the procuring entity may—

(a) cancel that procurement process, if the bid of the convicted bidder has been declared as successful but no procurement contract has been entered into;

(b) rescind the concerned contract or forfeit the payment of all or a part of the contract value, if the procurement contract has been entered into between the procuring entity and the convicted bidder.

Award of contract. 25. (1) Subject to the provisions of section 22 and sub-section (2) of section 11 and any rules that may be made in this behalf, the procuring entity shall consider a bid as successful,—

(a) where price is the only award criterion, the bid with the lowest bid price which is otherwise acceptable in terms of the criteria and procedures for evaluating bids as specified in the bidding document;

(b) where there are price and other award criteria, the most advantageous bid ascertained on the basis of the criteria and procedures for evaluating bids as specified in the bidding document;

(c) where there are no financial criteria, the most advantageous bid ascertained on the basis of selected non-financial criteria or other parameters for evaluating bids as specified in the bidding document.

(2) A bid shall be treated as successful under sub-section (1) after the competent authority has approved the procurement in terms of that bid.

(3) As soon as the procuring entity, with the approval of the competent authority, decides to accept a bid, he shall communicate that fact to all participating bidders and also exhibit the decision on the Central Public Procurement Portal;

(4) While communicating acceptance of a bid, the procuring entity shall advise the successful bidder to complete the requirements within a specified time, including signing of any agreement or furnishing any security, if necessary, to conclude the procurement contract.

26. (1) The terms and conditions of the procurement contract entered into shall be in accordance with the provisions of this Act, the rules applicable to such procurement contract and the conditions indicated in the bidding document.

Terms and conditions of procurement contract.

(2) The Central Government may prescribe terms and conditions of contract which shall be incorporated in the procurement contract entered into by procuring entities as applicable.

(3) Every procurement contract shall specify the period within which sums due and payable, in respect of any procurement, shall be paid.

27. The Central Government may, by notification, specify its offsets policy imposing any requirement for offsets and it shall be the duty of every procuring entity designated in the notification to implement such offset policy.

Offsets.

28. (1) Notwithstanding anything contained in this Act or any other law for the time being in force, a procuring entity shall not disclose any information, if such disclosure, in its opinion, is likely to—

Confidentiality.

(a) impede enforcement of any law;

(b) affect the security or strategic interests of India;

(c) affect the intellectual property rights or legitimate commercial interests of bidders or violate any pre-existing contractual obligations on confidentiality;

(d) affect the legitimate commercial interests or the intellectual property rights or violate any pre-existing contractual obligations on confidentiality of the procuring entity.

(2) Except as otherwise provided in this Act, a procuring entity shall treat all communications with bidders related to the procurement process in such manner as to avoid their disclosure to competing bidders or to any other person not authorised to have access to such information.

(3) The procuring entity may impose on bidders and sub-contractors, any terms and conditions mandating non-disclosure of any information, the disclosure of which shall violate the provisions of sub-section (1).

B.—METHODS OF PROCUREMENT

29. (1) Subject to the provisions of this Act and the rules made thereunder, a procuring entity may procure a subject matter of procurement by means of any of the following methods, namely:—

Methods of procurement.

(a) open competitive bidding; or

- (b) limited competitive bidding; or
- (c) two-stage bidding; or
- (d) single source procurement; or
- (e) electronic reverse auction; or
- (f) request for quotations; or
- (g) spot purchase; or
- (h) any other method of procurement as may be notified by the Central Government in consonance with the principles set forth in Chapter II of this Act.

(2) Subject to the conditions and procedures specified in section 36, a Central Purchase Organisation or the procuring entity may enter into a framework agreement or a rate contract using either open competitive bidding or limited competitive bidding.

(3) Notwithstanding anything contained in sub-section (1) and subject to the rules as may be made in this behalf, the procuring entity may, procure any subject matter of procurement using a framework agreement or a rate contract entered into by a Central Purchase Organisation or by the procuring entity.

(4) The Central Government may make rules relating to electronic procurement and may, by notification, declare adoption of electronic procurement as compulsory for different stages and types of procurement, and on such declaration, every requirement for written communication under this Act shall be deemed to have been satisfied if it were done by electronic means.

(5) In procuring a subject matter of procurement, every procuring entity shall follow the procedures in respect of the relevant method of procurement as may be prescribed.

Open competitive bidding.

30. (1) Every procuring entity shall prefer open competitive bidding as the method of procurement to be followed.

(2) Where the procuring entity chooses a method of procurement other than the open competitive bidding, it shall record the reasons and circumstances thereof.

(3) Open competitive bidding may also be followed in case of two stage bidding in accordance with the provisions of section 33 and electronic reverse auction in accordance with the provisions of section 34.

(4) The procuring entity may follow the pre-qualification procedure specified in section 13 and invite bids from pre-qualified bidders.

(5) In case of an open competitive bidding, the procuring entity shall invite bids by exhibiting an invitation on the Central Public Procurement Portal, its own website and by giving wide publicity in the manner as may be prescribed.

Limited competitive bidding.

31. (1) A procuring entity may choose to procure the subject matter of procurement by the method of limited competitive bidding, if—

(a) it determines that—

(i) the subject matter of procurement can be supplied only by a limited number of bidders; or

(ii) the time and cost involved to examine and evaluate a large number of bids may not be commensurate with the value of the subject matter of procurement; or

(iii) owing to an urgency brought about by unforeseen events, the procuring entity is of the opinion that the subject matter of procurement cannot be usefully obtained by adopting the method of open competitive bidding;

(b) procurement from a category of prospective bidders is necessary in accordance with the provisions of sub-section (2) of section 11; or

(c) a list of registered bidders is maintained for the subject matter of procurement in accordance with the provisions of section 14.

(2) Subject to the rules as may be made in this behalf, the procedure for limited competitive bidding shall include the following, namely:—

(a) the procuring entity shall invite bids by writing directly, on the same day, to—

(i) all the bidders who can supply the subject matter of procurement in accordance with the provisions of sub-clause (i) of clause (a) of sub-section (1); or

(ii) an adequate number of bidders who can supply the subject matter of procurement selected in a non-discriminatory manner to ensure effective competition, in case of sub-clause (ii) of clause (a) of sub-section (1); or

(iii) all the bidders who are registered for the subject matter of procurement in accordance with the provisions of clause (c) of sub-section (1);

(b) the procuring entity shall also exhibit the invitation to bid on the Central Public Procurement Portal.

32. (1) A procuring entity may choose to procure the subject matter of procurement by the method of single source procurement, if—

Single source procurement.

(a) the subject matter of procurement is available from a particular prospective bidder, or a particular prospective bidder has exclusive rights in respect of the subject matter of procurement, so that no reasonable alternative source and the use of any other procurement method are available; or

(b) owing to a sudden unforeseen event, there is extremely urgent need for the subject matter of procurement, and engaging in any other method of procurement shall cause delay; or

(c) the procuring entity, having procured goods, equipment, technology or services from a bidder, determines that additional supplies or services shall be procured from such bidder for reasons of standardization or because of the need for compatibility with existing goods, equipment, technology or services; or

(d) the procuring entity determines that the use of any other method of procurement is not appropriate for the protection of the national security; or

(e) the procurement from a particular prospective bidder is necessary in accordance with the provisions of sub-section (2) of section 11; or

(f) in the case of procuring entities specified in clause (b) or clause (c) of sub-section (2) of section 3, a contract with a customer other than a procuring entity requires procurement from a particular source.

(2) Subject to the rules as may be made in this behalf, the procedure for single source procurement shall include the following, namely:—

(a) the procuring entity shall solicit a bid from a single prospective bidder; and

(b) the procuring entity may engage in negotiations in good faith with the bidder.

33. (1) A procuring entity may choose to procure the subject matter of procurement by the method of two-stage bidding, if—

Two-stage bidding.

(a) it is not feasible for the procuring entity to formulate detailed specifications or identify specific characteristics for the subject matter of procurement, without receiving inputs regarding its technical aspects from bidders; or

(b) the character of the subject matter of procurement is subject to rapid technological advances or market fluctuations or both; or

(c) the procuring entity seeks to enter into a contract for the purpose of research, experiment, study or development, except where the contract includes the production of items in quantities sufficient to establish their commercial viability or to recover research and development costs; or

(d) the bidder is expected to carry out a detailed survey or investigation and undertake a comprehensive assessment of risks, costs and obligations associated with the particular procurement.

(2) Subject to the rules as may be made in this behalf, the procedure for two-stage bidding shall include the following, namely:—

(a) in the first-stage of the bidding process, the procuring entity shall invite bids containing the technical aspects and contractual terms and conditions of the proposed procurement without a bid price;

(b) all first-stage bids, which are otherwise eligible, shall be evaluated in accordance with the procedure laid down in the rules through an appropriate committee constituted by the procuring entity;

(c) the committee may hold discussions with the bidders and if any such discussion is held, equal opportunity shall be given to all bidders to participate in the discussions;

(d) in revising the relevant terms and conditions of the procurement, the procuring entity shall not modify the fundamental nature of the procurement itself, but may add, amend or omit any specification of the subject matter of procurement or criterion for evaluation;

(e) in the second-stage of the bidding process, the procuring entity shall invite bids from all those bidders whose bids at the first-stage were not rejected, to present final bid with bid prices in response to a revised set of terms and conditions of the procurement;

(f) any bidder, invited to bid but not in a position to supply the subject matter of procurement due to modification in the specifications or terms and conditions, may withdraw from the bidding proceedings without forfeiting any bid security that he may have been required to provide or being penalised in any way, by declaring his intention to withdraw from the procurement proceedings with adequate justification.

Electronic
reverse
auction.

34. (1) A procuring entity may choose to procure a subject matter of procurement by the method of electronic reverse auction, if—

(a) it is feasible for the procuring entity to formulate a detailed description of the subject matter of the procurement;

(b) there is a competitive market of bidders anticipated to be qualified to participate in the electronic reverse auction, so that effective competition is ensured; and

(c) the criteria to be used by the procuring entity in determining the successful bid are quantifiable and can be expressed in monetary terms.

(2) Subject to the rules as may be made in this behalf, the procedure for electronic reverse auction shall include the following, namely:—

(a) the procuring entity shall solicit bids through an invitation to the electronic reverse auction to be published or communicated in accordance with the provisions of sub-section (5) of section 30 or sub-section (2) of section 31, as the case may be;

(b) the invitation shall, in addition to the information as specified in section 15, include details relating to—

- (i) access to and registration for the auction;
- (ii) opening and closing of auction;
- (iii) norms for conduct of the auction;
- (iv) any other information as may be relevant to the method of procurement.

35. (1) A procuring entity may choose to procure a subject matter of procurement of the value which is less than such monetary value as may be prescribed, by the method of request for quotations in the following situations, namely:—

Request for quotations and spot purchase.

- (a) procurement of readily available goods that are not specially produced to the particular description of the procuring entity and for which there is an established market; or
- (b) physical services that are not specially provided to the particular description of the procuring entity and are readily available in the market; or
- (c) procurement of any goods or works or services which are urgently required for maintenance or emergency repairs.

(2) Subject to the rules as may be made in this behalf, the procedure for request for quotations shall include the following, namely:—

- (a) quotations shall be invited from as many potential bidders as practicable;
- (b) each bidder shall be permitted to give only one quotation;
- (c) the successful quotation shall be the lowest priced quotation meeting the needs of the procuring entity as set out in the request for quotations.

(3) A procuring entity may adopt the method of spot purchase of the subject matter of procurement specified in sub-section (1) through a purchase committee comprising three members within the procuring entity and in such cases the purchase committee shall record a certificate to the effect that it is satisfied that the goods or services are of requisite quality and are priced at the prevailing market rate.

(4) Nothing contained in sections 7 to 27 (both inclusive) and sections 38 to 42 (both inclusive) shall apply to purchases made under this section.

36. (1) A Central Purchase Organisation or the procuring entity may enter into a framework agreement or a rate contract where it determines that—

Framework agreements and rate contracts.

- (a) the need for the subject matter of procurement is expected to arise on a recurring basis during a given period of time;
- (b) by virtue of the nature of the subject matter of procurement, the need for it may arise on an urgent basis during a given period of time.

(2) A framework agreement or a rate contract may be entered into on the basis of open competitive bidding or by means of other procurement methods in accordance with the provisions of this Act.

(3) Subject to the rules as may be made in this behalf, the procedure for framework agreement or rate contract shall include the following, namely:—

- (a) the manner in which the framework agreement or rate contract is to be entered into; and
- (b) the manner in which a procurement contract has to be entered into using a framework agreement or rate contract.

Additional conditions for use of methods of procurement.

37. Notwithstanding anything contained in sections 31 to 36 (both inclusive) and consistent with the principles of transparency and accountability, the Central Government may by notification, specify additional conditions for the use of any of the methods of procurement mentioned in clauses (b) to (g) of sub-section (1) of section 29.

CHAPTER III

INSTITUTIONAL MECHANISMS

A.—TRANSPARENCY MECHANISM

Central Public Procurement Portal.

38. (1) The Central Government shall set up and maintain a Central Public Procurement Portal accessible to the public for posting and exhibiting matters relating to public procurement.

(2) Subject to the provisions of section 28, each procuring entity shall cause the procurement related information to be exhibited as required under this Act or the rules made thereunder on the Portal referred to in sub-section (1).

(3) Without prejudice to the generality of the provisions contained in sub-section (2), the Central Public Procurement Portal shall provide access to the following information in relation to procurement governed by the provisions of this Act, namely:—

(a) pre-qualification document, bidder registration document, bidding document and any modification or clarification including those pursuant to pre-bid conference, and corrigenda thereto;

(b) list of bidders that presented bids including for pre-qualification or bidder registration, and of those bidders which were pre-qualified and registered, as the case may be;

(c) list of bidders excluded under section 22, with reasons thereof;

(d) decisions taken during the process of grievance redressal under the provisions of Chapter III;

(e) details of successful bids, their prices and bidders;

(f) names and the particulars of bidders who have been debarred by the Central Government or a procuring entity together with the name of the procuring entity, cause for the debarment action and the period of debarment;

(g) any other information as may be prescribed.

(4) The information exhibited in terms of this section shall be available on the Portal for such period as may be prescribed.

Documentary record of procurement proceedings and of communications.

39. (1) The procuring entity shall maintain a record of its procurement proceedings, which shall include the following particulars, namely:—

(a) documents pertaining to determination of need for procurement;

(b) description of the subject matter of the procurement;

(c) statement of the reason for choice of a procurement method other than open competitive bidding;

(d) documents relating to pre-qualification and registration of bidders, if applicable;

(e) particulars of the participating bidders at each stage;

(f) requests for clarifications and any reply thereof including the clarifications given during pre-bid conferences;

(g) bids evaluated, and documents relating to their evaluation;

- (h) details of any grievance redressal proceedings, and the related decisions;
- (i) any other information or record as may be prescribed.

(2) Any document, notification, decision or other information generated in the course of a procurement and communicated as required by this Act (including the grievance redressal proceedings) relating to the course of a meeting, or forming part of the record of the procurement process, which may be used for subsequent reference, shall be maintained.

22 of 2005.

(3) Subject to the provisions of the Right to Information Act, 2005 or of any other law for the time being in force relating to retention of records, the procuring entity shall retain the records specified in sub-sections (1) and (2), for such period, after the expiry of the procurement contract, as may be prescribed, for audit or such other purposes.

B.—GRIEVANCE REDRESSAL

40. (1) Subject to the provisions of section 42, any bidder or prospective bidder aggrieved by any decision, action or omission of the procuring entity which is in contravention to the provisions of this Act or the rules made thereunder, may, within a period of ten days or such other period as may be specified in the pre-qualification document, bidder registration document or bidding document, as the case may be, from the date of such decision or action, make an application for review of such decision, action or omission, as the case may be, to the procuring entity specifying the ground or grounds thereof:

Review by
procuring
entity.

Provided that after the declaration of results of a bidding in accordance with the provisions of section 25, the application for review may be filed only by a bidder who has participated in procurement proceedings:

Provided further that in case a procuring entity evaluates the technical bid before the opening of the financial bid, an application for review in relation to the financial bid may be filed only by a bidder whose technical bid is found to be acceptable.

(2) The official to whom the application for review has to be addressed, shall be indicated in the pre-qualification document bidder registration document or bidding document, as the case may be.

(3) Upon receipt of an application for review under sub-section (1), the procuring entity shall decide as to whether the procurement process shall be suspended pending disposal of the application.

(4) The procuring entity may, after examining the application and the documents available to him, give such reliefs as may be considered appropriate to the applicant and shall communicate its decision to him.

(5) The procuring entity shall deal with an application under sub-section (1) as expeditiously as possible and shall endeavour to dispose of it within a period of thirty days from the date of receipt of the application or such other period as may be specified in the pre-qualification document, bidder registration document or bidding document, as the case may be.

41. (1) If the procuring entity fails to dispose of the application made under section 40 within the period specified in that section, or if the bidder or prospective bidder is aggrieved by the decision of the procuring entity under section 40, the bidder or prospective bidder, may file an application for redressal to the concerned procurement redressal committee within a period of fifteen days from the date of expiry of the period allowed under section 40 or of the date of receipt of the decision under section 40, as the case may be.

Procurement
redressal
committees.

(2) Every application for redressal under sub-section (1) shall be made in such form and in such manner and shall be accompanied by such fees as may be prescribed.

(3) The Central Government shall constitute one or more independent procurement redressal committees and different procurement redressal committees may be constituted for a group of procuring entities or for different subject matters of procurement or for different geographical areas as may be considered necessary.

(4) Every committee shall consist of not less than three members including its chairperson who shall be a retired Judge of a High Court.

(5) The members of the committee shall have—

(a) proven integrity and experience in public procurement; and

(b) experience at senior levels in public administration or public finance or management of engineering or scientific projects or management of Central Public Sector Enterprises or Undertakings.

(6) The term of the Chairperson and members of the committee shall be for three years.

(7) The sitting fees and other allowances payable to the chairperson and members shall be such as may be prescribed.

(8) On receipt of an application under sub-section (1), the committee shall, after giving an opportunity of being heard to the procuring entity as well as the applicant, determine as to whether the procuring entity has complied with the provisions of this Act, the rules made thereunder and the terms of the pre-qualification, bidder registration or bidding document, as the case may be, and communicate its recommendations, including the corrective measures to be taken, to the procuring entity and to the applicant.

(9) Upon receipt of an application under sub-section (1), the committee shall hold as many sittings as considered necessary to dispose of the application.

(10) It shall be the duty of the procuring entity to provide all necessary facilities and assistance for the smooth and effective functioning of the committee.

(11) Subject to the provisions of sub-section (12), every committee shall dispose of the application by such procedure as it may consider appropriate and shall follow the principles of natural justice.

(12) No information which shall impair the protection of national security or impede the enforcement of law or fair competition or prejudice to the legitimate commercial interests of the bidder or the procuring entity shall be disclosed in a proceeding under this section.

(13) The procurement redressal committee may recommend to the procuring entity the suspension of the procurement process pending disposal of the application, if in its opinion, failure to do so is likely to lead to miscarriage of justice.

(14) An application filed under sub-section (1) shall be dealt with as expeditiously as possible and the committee shall, within a period of thirty days from the date of its receipt, make its recommendations on the action to be taken by the procuring entity or the applicant or both:

Provided that the committee may, for sufficient reasons to be recorded in writing, dispose of an application within a further period of fifteen days.

(15) On receipt of a recommendation of the procurement redressal committee, the procuring entity shall communicate its decision thereon to the applicant and to the committee, within a period of fifteen days or such further period not exceeding fifteen days, as may be considered necessary, from the date of receipt of the recommendation and in case of non-acceptance of any recommendation, the reasons for such non-acceptance shall also be mentioned in such communication.

42. A request for review under section 40 and an application under section 41 shall not be made in regard to any decision of the procuring entity on the following matters, namely:—

- (a) determination of need of procurement in accordance with the provisions of section 7;
- (b) provisions limiting participation of bidders in the procurement process in accordance with the provisions of section 11;
- (c) the decision to enter into negotiations in accordance with the provisions of section 23;
- (d) cancellation of a procurement process in accordance with the provisions of section 24;
- (e) applicability of the provisions on confidentiality specified in section 28.

Grievances
not to relate
to certain
issues.

C.—PROFESSIONALISATION

43. The Central Government may prescribe professional standards to be achieved by officials dealing with procurement matters under this Act and specify suitable training and certification requirements for the same.

Requirement
of profes-
sional
standards,
training and
certification.

CHAPTER IV

OFFENCES, PENALTIES AND DEBARMENT

44. Whoever, being a public servant acting in connection with any procurement process, accepts or agrees to accept or obtains or attempts to obtain from any person, for himself or for any other person, any gratification or any valuable thing without consideration or for a consideration which he knows to be inadequate, in connection with such public procurement, as a motive or reward, for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official duties, favours to any person or, rendering or attempting to render any service or disservice to any person shall be punishable with imprisonment which shall be not less than six months but which may extend to five years and shall also be liable to fine.

Punishment
for taking
gratification
or valuable
thing in
respect of
public
procurement.

45. Whoever,—

Interference
with procure-
ment process.

- (a) interferes with or influences any procurement process with the intention of securing any wrongful gain or undue advantage for any prospective bidder or bidder; or
- (b) interferes with the procurement process with the intention of causing any unfair disadvantage for any prospective bidder or bidder; or
- (c) engages in any action or lobbying, directly or indirectly, with the objective of unduly restricting fair competition; or
- (d) influences any procuring entity or any official thereof or wilfully or fraudulently makes any assertion or representation that shall restrict or constrain fair competition in any procurement process; or
- (e) engages a former official of a procuring entity as an employee, director, consultant, adviser or otherwise, within a period of one year after such former official was disassociated with a procurement in which the employer had an interest; or
- (f) engages in any form of bid-rigging, collusive bidding or anti-competitive behaviour in the procurement process; or
- (g) breaches confidentiality referred to in section 28 for any undue gain,

shall be punishable with imprisonment for a term which may extend to five years and shall also be liable to fine which may extend to ten per cent. of the assessed value of procurement.

Vexatious complaints.

46. Whoever makes any vexatious, frivolous or malicious complaint under this Act, with the intention of delaying or defeating any procurement or causing loss to any procuring entity or any other bidder, shall be punishable with fine which may extend to five per cent of the value of procurement.

Offences by companies.

47. (1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of and was responsible for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of having committed the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this section shall render any such person liable for any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of having committed such offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purpose of this section—

(i) "company" means a body corporate and includes a limited liability partnership, firm, registered society, trust or other association of individuals; and

(ii) "director", in relation to a limited liability partnership or firm, means a partner in the firm.

Punishment for abetment of offences.

48. Whoever abets any offence punishable under this Act, whether or not that offence is committed in consequence of that abetment, shall be punishable with the punishment provided for the said offence.

Debarment from bidding.

49. (1) A bidder shall be debarred by the Central Government, if he has been convicted of an offence—

(a) under the Prevention of Corruption Act, 1988; or

(b) under the Indian Penal Code or any other law for the time being in force, for causing any loss of life or property or causing a threat to public health as part of execution of a public procurement contract.

(2) A bidder debarred under sub-section (1) or any successor of the bidder shall not be eligible to participate in a procurement process of any procuring entity for a period not exceeding three years commencing from the date of debarment.

(3) A procuring entity may debar a bidder or any of its successor, from participating in any procurement process undertaken by it, for a period not exceeding two years, if—

(a) it determines that the bidder has breached the code of integrity specified under section 6; or

(b) the bidder, other than in situations of *force majeure*,—

(i) withdraws from the procurement process after opening of financial bids or after being declared the successful bidder; or

(ii) fails to enter into procurement contract or fails to provide performance security or any other document or security required in terms of the bidding documents after being declared as successful bidder; or

49 of 1988.

45 of 1860.

(c) in respect of any procurement contract or framework agreement, the entire performance security or any substitute thereof, of the bidder has been forfeited by that procuring entity for breach of contract.

(4) The Central Government or a procuring entity, as the case may be, shall not debar a bidder under this section unless such bidder has been given a reasonable opportunity to represent against such debarment.

50. No court shall take cognizance of an offence punishable under this Act, alleged to have been committed by a public servant during the course of his employment, except with the previous sanction,—

(a) in case of a person, who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;

(b) in the case of any other person, of the authority competent to remove him from his office.

Previous
sanction
necessary for
prosecution.

CHAPTER V

MISCELLANEOUS

45 of 1860.

51. Every official of a procuring entity or any member of a committee constituted under this Act, acting under or in pursuance of the provisions of this Act or rules, orders or notifications made thereunder, shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

Official of
procuring
entity and
member of a
committee to
be public
servants.

Protection of
action taken
in good faith.

52. No suit, prosecution or other legal proceedings shall lie against any officer or any other employee acting under this Act for anything which is in good faith done or intended to be done under this Act or the rules made thereunder.

Application
of other laws.

53. The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.

54. Any sum payable by any person under this Act shall be recoverable as arrears of land revenue.

Recovery of
sums payable
under the Act.

55. (1) For the purposes of this Act a notice, document or order shall be deemed to be served—

Service of
notice,
documents
and orders,
etc.

(a) on any individual by—

(i) delivering it to the person personally; or

(ii) leaving it at, or by sending it by registered or speed post, to the address of the place of residence or business of the person last known;

(b) on a body corporate, by leaving it at, or sending it by registered or speed post, to the registered office of the body corporate.

(2) For the purposes of this Act, when the procedure laid down by sub-section (1) is followed, service shall be deemed to be effected by properly addressing, prepaying and posting the document, notice or order, as the case may be.

56. (1) The Central Government may, by notification, make rules for carrying out the provisions of this Act.

Power of
Central
Government
to make rules.

(2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:—

(a) procurements and procuring entities covered under sub-section (1) of section 4;

- (b) different sets of rules for different procuring entities and procurements under sub-section (3) of section 5;
- (c) code of integrity under sub-section (1) of section 6;
- (d) any other matter to be decided while determining need for procurement under clause (f) of sub-section (2) of section 7;
- (e) guidelines for drawing up the description of the subject matter of procurement under clause (c) of sub-section (1) of section 9;
- (f) time limit for various stages of the process of procurement under sub-section (1) of section 10;
- (g) circumstances in which participation of bidders may be limited under sub-section (1) of section 11;
- (h) qualifications to be fulfilled by bidders under clause (e) of sub-section (2) of section 12;
- (i) the form and manner of the declaration to be submitted by the bidder under sub-section (4) of section 12;
- (j) the manner of giving wide publicity under sub-section (5) of section 13;
- (k) the manner and procedure for pre-qualification under sub-section (8) of section 13;
- (l) the manner of giving wide publicity and the procedure for registration under sub-section (2) of section 14;
- (m) provisions relating to contents of bidding documents under sub-section (1) of section 15;
- (n) conditions of bidding document and model of bidding document under sub-section (2) of section 15;
- (o) manner of calling for bids for offsets under sub-section (1) of section 16;
- (p) procedure for submission of bids, bid securities, modification and withdrawal of bids, opening and evaluation of bids under section 20;
- (q) evaluation criteria under sub-section (1) of section 21;
- (r) maintenance of records of trials and testing under sub-section (2) of section 21;
- (s) identification and treatment of conflict of interest under clause (e) of sub-section (1) of section 22;
- (t) circumstances and conditions for price negotiations under section 23;
- (u) the terms of award of contract under sub-section (1) of section 25;
- (v) terms and conditions of procurement contracts under sub-section (2) of section 26;
- (w) procurement using framework agreements and rate contracts under sub-section (3) of section 29;
- (x) electronic procurement under sub-section (4) of section 29;
- (y) procedures in respect of method of procurement under sub-section (5) of section 29;
- (z) manner of giving wide publicity to invite bid under sub-section (5) of section 30;
- (za) monetary value for procurement through request for quotations and spot purchase under sub-section (1) of section 35;

(zb) procedure for framework agreements and rate contracts under sub-section (3) of section 36;

(zc) any other information under clause (g) of sub-section (3) and the period for which such information shall be available under sub-section (4) of section 38;

(zd) information or record of procurement proceedings required to be maintained under clause (i) of sub-section (1) of section 39;

(ze) period of retention of documentary record under sub-section (3) of section 39;

(zf) the form, the manner and the fees for application for redressal under sub-section (2) of section 41;

(zg) sitting fees and other allowances payable to chairperson and members of procurement redressal committee under sub-section (7) of section 41;

(zh) professional standards, training and certification for officials dealing with procurement matters under section 43;

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

57. (1) A procuring entity may, where it considers necessary for proper implementation of the provisions of this Act, issue guidelines or instructions consistent with the provisions of this Act and the rules made thereunder.

Power to issue guidelines.

(2) Any such guidelines or instructions shall be exhibited on the website of the procuring entity.

58. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act, as may appear to it to be necessary, for removing the difficulty:

Power to remove difficulties.

Provided that no order shall be made under this section after the expiry of a period of three years from the date of commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

Power to exempt.

59. (1) If the Central Government is satisfied that it is necessary in public interest so to do, it may, by order published in the Official Gazette and for reasons to be recorded in writing, exempt any procurement or a class or category of procurements or by a class of procuring entities from the application of any of the provisions of this Act;

(2) Every order made under sub-section (1) shall, as soon as may be after it is made, be laid before each House of Parliament.

Savings.

60. All rules, regulations, orders, notifications, departmental codes, manuals, bye-laws, official memoranda or circulars relating to procurement of goods, services or works provided for in this Act, which are in force on the date of commencement of this Act, shall continue to be in force to the extent they are consistent with the provisions of this Act, until they are repealed or superseded by any rule, guideline, notification or order, as the case may be, made or issued under this Act.

STATEMENT OF OBJECTS AND REASONS

Procurements made by the Central Government are regulated by executive instructions in the form of General Financial Rules and manuals and procedures issued thereunder. Procurements made by the Central Public Sector Enterprises are governed by their own respective procurement procedures. Autonomous and statutory bodies make their procurements based on the General Financial Rules or their own rules, as applicable. The Central Government, Central Public Sector Enterprises as well as autonomous and statutory bodies are also subject to audit by the Comptroller and Auditor General of India and are required to follow the guidelines issued by the Central Vigilance Commission.

2. Major countries of the world have well codified legal provisions governing public procurement. In India, the States of Tamil Nadu and Karnataka have enacted laws relating to transparency in public procurement.

3. In order to regulate public procurement with the objectives of ensuring transparency, accountability and probity in the procurement process, fair and equitable treatment of bidders, promoting competition, enhancing efficiency and economy, and maintaining integrity and public confidence in the public procurement process, it has been felt necessary to enact a law in this regard, namely, the Public Procurement Bill, 2012. The Bill, *inter alia*, seeks to,—

- (a) codify the basic norms governing public procurement and requires the procuring entities and their officials to comply with the norms;
- (b) lay down a code of integrity to be followed by the procurement entity and the bidders;
- (c) lay down the general principles to be followed during the procurement process and the conditions for use of, and brief procedures for, various methods of procurement;
- (d) provide adequate flexibility to take into account diversity of needs of procuring entities, description of subject matters of procurement and methods of procurement;
- (e) provide for greater transparency and accountability through a Central Public Procurement Portal to be set up by the Central Government;
- (f) provide for a grievance redressal system;
- (g) enable building of expertise in procurement matters through professional standards, suitable training and certification;
- (h) make provisions for offences and penalties relating to public procurement and for debarment of bidders.

4. The notes on clauses explain in detail the various provisions contained in the Bill.

5. The Bill seeks to achieve the above objects.

NEW DELHI;
The 2nd May, 2012.

PRANAB MUKHERJEE

Notes on clauses

Clause 1.—This clause provides for the short title and commencement of the proposed legislation.

Clause 2.—This clause defines certain expressions used in the proposed legislation, which, *inter alia*, include the expressions "bid", "bidder", "bidding document", "bid security", "Central Purchase Organisation", "electronic reverse auction", "framework agreement", "goods", "invitation to bid", "invitation to pre-qualify", "notification", "offset", "pre-qualification procedure", "pre-qualification document", "procurement" or "public procurement", "procurement contract", "procurement process", "procuring entity", "prospective bidder", "Public Private Partnership", "rate contract", "registered bidder", "service", "subject matter of procurement" and "works".

Clause 3.—This clause specifies the procuring entities to which the proposed legislation shall apply. These entities include any Ministry or Department of the Central Government or its unit, attached or subordinate office to which powers of procurement have been delegated; any Central Public Sector Enterprise or undertaking owned or controlled by the Central Government; any company in which more than fifty per cent. of the paid-up share capital is held by the Central Government or by one or more companies in which the Central Government holds more than fifty per cent. of the paid-up share capital or by both; any body established or constituted under the Constitution whose expenditure is met from the Consolidated Fund of India; any body or board, etc., constituted under an Act of Parliament or owned or controlled by the Central Government; and by notification, any other entity that receives substantial financial assistance from the Central Government. It further provides that the Central Government may, by notification, permit procurement financed under assistance from the Multilateral Development Banks, bilateral development agencies, foreign governments or pursuant to an inter-Governmental agreement in accordance with procurement procedures stipulated in terms of such assistance or agreement provided they are in consonance with the basic norms of procurement specified in sub-clause (1) of clause 5 of the Bill.

Clause 4.—This clause provides that the provisions of Chapter II and sections 38 to 42 shall not apply to (i) procurements of value below rupees fifty lakhs or such higher values as may be notified for different classes and categories of procurements and procuring entities, (ii) emergency procurements for the management of disasters, and (iii) procurements for national security or on strategic considerations that the Central Government may by general or special order, specify. It further empowers the Central Government to make rules consistent with the provisions of clauses 5 and 6 of the proposed legislation to regulate such procurements and procuring entities.

Clause 5.—This clause relates to the basic norms of public procurement and provides that procuring entities shall have the responsibility and accountability to ensure efficiency, economy and transparency; provide fair and equitable treatment to bidders; promote competition; ensure reasonableness of price and evolve mechanisms to prevent corrupt practices. It further provides for every procuring entity to carry out its procurement in accordance with the provisions of the proposed legislation and the rules made thereunder. It also empowers the Central Government to make different sets of rules for different categories of procuring entities and procurements. It also provides an explanation which seeks to explain the terms of category of procurement and procuring entities.

Clause 6.—This clause enables the Central Government to lay down a code of integrity for officials of procuring entities and the bidders and specifies certain provisions to be included in the code. It also empowers the procuring entity to take appropriate measures against a bidder for breach of the code of integrity including exclusion from the procurement process, debarment from participation in future procurements, etc.

Clause 7.—This clause lays down the requirement of first determining the need for the subject matter of procurement taking into account its estimated cost and specifies the matters to be decided on at that stage. It further provides that the procuring entity shall maintain all necessary documents relating to determination of the need for procurement and may publish information regarding planned procurement activities for the forthcoming year or years on the Central Public Procurement Portal.

Clause 8.—This clause prohibits packaging or division of procurement or any other action by the procuring entities so as to limit competition or to avoid obligations under the proposed legislation. It, however, allows for division of the procurement into appropriate packages in the interest of efficiency, economy and timely completion or supply.

Clause 9.—This clause provides that the description of the subject matter of procurement shall be set out in the pre-qualification document, bidder registration document and the bidding document, as the case may be, and lays down the manner in which the description shall be formulated. It further provides that the technical specifications shall, to the extent practicable, be based on the national technical regulations or recognised national standards or building codes and in their absence, be based on relevant international standards. However, it provides that a procuring entity may for reasons to be recorded in writing, base the technical specification on the equivalent international standards even where national technical regulations or recognised national standards exists.

Clause 10.—This clause provides that the expected time limit for completion of various stages of the process of procurement shall be indicated by the procuring entities in the pre-qualification document, bidder registration document or bidding document and that the procuring entity shall record reasons for modification of the time limit.

Clause 11.—This clause provides for non-discriminatory participation of bidders except where authorised or required under the proposed legislation, rules or any other law for the time being in force. It also empowers the Central Government to provide for mandatory procurement and purchase preference in procurement from any category of bidders for promotion of domestic industry; or in line with the socio-economic policy of the Central Government; or on any other consideration in public interest in furtherance of a duly notified Central Government policy. It also provides that the procuring entity at the time of inviting the participation of bidders shall declare whether participation is limited and its grounds and such declaration may ordinarily be not altered subsequent thereto. It also enables the Central Government to impose or enforce measures limiting participation on account of the need to protect public order, morality or safety; animal life or plant life or life of human beings and their health; intellectual property; and the national security and strategic interests of India.

Clause 12.—This clause lays down the qualifications of bidders for participating in a procurement process such as possessing the necessary professional, technical, financial and managerial resources and competence; filing of required tax returns; not being insolvent, in receivership, bankrupt or being wound up, etc. It further provides that the procuring entity may require a bidder to provide such information or declaration which is necessary to make an evaluation of its qualifications. It also lays down that any such requirement shall be indicated in the pre-qualification document, bidder registration document and the bidding document, as the case may be. It also provides that the qualifications of bidders shall be evaluated only in accordance with the requirements of this clause.

Clause 13.—This clause provides for a pre-qualification process prior to inviting bids with a view to identify the bidders that are qualified. It further provides for the procuring entities to specify the period up to which the pre-qualification shall be valid and in case bids are not invited within such period, fresh qualification shall be done before inviting bids and provides that the pre-qualification shall be ordinarily for single procurement. It also provides that wide publicity shall be given to invite offers and that the particulars of the bidders who are qualified shall be exhibited on the Central Public Procurement Portal and also provides the entitlement of the pre-qualified bidders to continue in the procurement proceedings. It also provides for the procuring entity to identify the pre-qualified bidders as per provisions of clause 12 and the criteria set out in the pre-qualification document and for the procedure for pre-qualification to be prescribed in the rules.

Clause 14.—This clause provides for registration of bidders with a view to identify reliable bidders and regular updation of the list of registered bidders. It further provides that wide publicity shall be given to invite offers from prospective bidders and registration shall be made of such bidders who fulfil the qualifications. It also provides that the procuring entities shall update the list by allowing potential bidders to apply for registration on continuous basis or invite offers at least once in a year. It also provides that the procuring entities may use the list of registered bidders of a Central Purchase Organisation or any other procuring entity, for the purpose of procurement, and that the result of the registration process shall be intimated to the bidders and the list of registered bidders shall be exhibited on the Central Public Procurement Portal.

Clause 15.—This clause lays down the essential contents of bidding document such as the specifications of goods, the nature and locations of works, the nature of services, limitation of participation, the manner, date and time of presentation of bids, the criteria for evaluation and the terms of procurement contract, etc., and empowers the Central Government to prescribe conditions to be included in the bidding document and the model of such documents.

Clause 16.—This clause provides that a procuring entity may call for single envelope or two envelope bids depending upon the manner in which the techno-commercial aspects and financial aspects are required to be evaluated. It further provides that in case of two envelope bids, the techno-commercial bid shall be opened and evaluated first and the financial bid of only those bids shall be opened and evaluated which have been found techno-commercially acceptable.

Clause 17.—This clause provides that the time limit for submission of bids shall be fixed taking into account the reasonable time required by the bidder and the timeframe envisaged for the procurement. However, it further provides that the maximum time allowed for submission of bids shall be the same for all bidders.

Clause 18.—This clause provides for bidders to seek clarifications from the procuring entity in respect of the bidding documents. It further provides that the time period for requesting for clarification and for the procuring entity to respond to the request shall be specified in the bidding document and request for clarifications and responses thereto shall be intimated to bidders and be exhibited on the Central Public Procurement Portal. It also enables the holding of a pre-bid conference to clarify doubts of potential bidders and lays down the requirement to intimate the record of such conference to all bidders and to exhibit the same on the Central Public Procurement Portal.

Clause 19.—This clause requires any modification made to the bidding document or any clarification which materially affects the terms of the bidding document, to be communicated or published in the same manner as the communication or publication of the initial bidding document. It also allows the procuring entity to extend the time limit for submission of bids in such cases. Further, any participating bidder shall have the opportunity to modify or re-submit the bid or to withdraw the bid in cases where the modification to the bidding documents materially affects the essential terms of the procurement. However, it also provides that the bid last submitted or the bid as modified shall be considered for evaluation.

Clause 20.—This clause enables the Central Government to lay down in the rules, the procedures relating to submission of bids, bid securities, modification and withdrawal of bids, opening and evaluation of bids, including constitution of committees for these purposes.

Clause 21.—This clause lays down that the criteria for evaluation shall relate to the subject matter of procurement and specifies the possible criteria which may include the price; the cost of operating, maintaining and repairing goods or works; the time for delivery of goods, completion of works or provision of services; the characteristics, of the subject matter of procurement such as functional or environmental characteristics, etc. It further provides that the criteria for evaluation of bids, including requirements for trials, sample testing, etc., and where applicable the relative weights to be attached to each criterion, shall be contained in the bidding document. It also provides that procuring entities shall not use criteria other than those mentioned in the bidding document.

Clause 22.—This clause lays down the situations such as bidder not having qualified, bid departing from the essential requirements, providing false information, bidder or his agent giving gratification, etc. in which a procuring entity shall exclude a bid for reasons to be recorded in writing. It further lays down that such decision of the procuring entity shall be communicated to the concerned bidder in writing and also be exhibited on the Central Public Procurement Portal.

Clause 23.—This clause prohibits the holding of price negotiations with a bidder except in the case of single source procurement or in the circumstances and subject to the conditions that may be specified in the rules.

Clause 24.—This clause enables the procuring entity to cancel the process of procurement at any time before accepting the successful bid. It further provides that in case a decision to cancel the procurement is taken, the procuring entity shall not open any bid or proposals and shall return the same and that the decision for cancellation and the reasons thereof shall be communicated to bidders who participated in the process. It also provides that if the successful bidder fails to sign the procurement contract or fails to provide the security as may be required or otherwise withdraws from the procurement process, such process may be cancelled. However, it provides that for cogent reasons recorded in writing, the procuring entity may award the contract to the next successful bidder where the successful bidder has withdrawn from the process due to situations specified in this clause. It also provides that the procurement process may be cancelled if a successful bidder is convicted of any offence under the proposed legislation but no procurement contract has been entered into and that the procuring entity may rescind the contract or forfeit the payment of all or part of the value if the contract has been entered into.

Clause 25.—This clause lays down the basis for consideration of a bid as successful in various situations such as where price is the only criteria, the bid with the lowest price; where there are price and other criteria, the most advantageous bid ascertained on the basis of the criteria and procedures for evaluating bids; and where there are no financial criteria, the most advantageous bid ascertained on the basis of selected non-financial criteria or other parameters for evaluating the bid. It further requires the fact of acceptance of a bid as successful to be communicated to all participating bidders and to exhibit the decision on the Central Public Procurement Portal. It also requires the successful bidders to be advised to complete the requirement within a specified time.

Clause 26.—This clause lays down that procurements contracts shall be in accordance with the provisions of the proposed legislation, the applicable rules and the conditions indicated in the bidding document. It also enables the Central Government to prescribe terms and conditions to be incorporated in procurement contracts. It also requires that every procurement contract shall specify the period within which sums due and payable, in respect of the procurement, shall be paid.

Clause 27.—This clause enables the Central Government to notify its offset policy and mandates that procuring entities designated in the notification shall implement it.

Clause 28.—This clause prohibits disclosure of any information by the procuring entity if such disclosure is likely to impede enforcement of any law; or affect the security or strategic interests of India; or affect the intellectual property rights or legitimate commercial interests of bidders or violate any pre-existing contractual obligations on confidentiality; or affect the legitimate commercial interests or the intellectual property rights or violate any pre-existing contractual obligations on confidentiality of the procuring entity. It also enables the procuring entity to impose on bidders and sub-contractors any terms and conditions mandating non-disclosure of any information in the aforesaid situations.

Clause 29.—This clause provides the various methods of procurement that may be used by a procuring entity namely open competitive bidding, limited competitive bidding, two-stage bidding, single source procurement, electronic reverse auctions, request for quotations, and spot purchase and requires procuring entities to follow the procedure for the relevant method of procurement as may be given in the rules. It also enables the Central

Government to notify any other method of procurement which is in consonance with the principles set forth in Chapter II of the proposed legislation. It also enables a Central Purchase Organisation or a procuring entity to enter into framework agreements or rate contracts and allows for procurement using such framework agreements or rate contracts. It also empowers the Central Government to make rules relating to electronic procurement and to declare adoption of electronic procurement as compulsory for different stages and types of procurement.

Clause 30.—This clause provides that procuring entities shall prefer open competitive bidding as the method of procurement to be followed and where a procuring entity chooses any other method of procurement, reasons and circumstances for the same shall be recorded. It further provides that open competitive bidding may be followed in case of two stage bidding and electronic reverse auction. It also provides that the procuring entity may follow the pre-qualification procedure specified in clause 13 and in such cases bids may be invited from pre-qualified bidders. It also provides that in case of open competitive bidding, bids shall be invited by publishing an invitation on the Central Public Procurement Portal, the procuring entity's own website and by giving wide publicity in a manner to be specified in the rules.

Clause 31.—This clause lays down the conditions for use of and major features of the procedure for the method of limited competitive bidding. It provides that limited competitive bidding may be used if the procuring entity determines that the subject matter of procurement can be supplied by limited number of bidders; or the time and cost involved to examine and evaluate a large number of bids may not be commensurate with the value of procurement; or owing to an urgency brought about by unforeseen events, the procurement can not be usefully made through open competitive bidding, etc. It further provides the procedure for limited competitive bidding shall include that the procuring entity shall invite bids by writing directly to all bidders who can supply the subject matter of procurement; or an adequate number of bidders who can supply the subject matter of procurement, or all bidders who are registered for the subject matter of procurement, depending on the condition for use of the method and that the invitation to bid shall be exhibited on the Central Public Procurement Portal.

Clause 32.—This clause lays down the conditions for use of and major features of the procedure for the method of single source procurement. It provides that single source procurement may be used if the subject matter of procurement is available from a particular prospective bidder, or a particular prospective bidder has exclusive rights in respect of the subject matter; or owing to sudden unforeseen events there is urgent need for procurement; or the procuring entity having procured goods, etc., determines that additional supplies or services shall be procured from such bidder for reasons of standardisation, etc.; or the procuring entity determines that the use of any other method is not appropriate for the protection of national security; or the procurement is necessary from a particular prospective bidder as per provisions of sub-clause (2) of clause 11; or in case of central public sector undertaking, etc., a contract with a customer other than a procuring entity requires procurement from a particular source. It also provides procedure for single source of procurement shall include provisions for procuring entity to solicit a bid from a single prospective bidder and to engage in negotiations with the bidder.

Clause 33.—This clause provides that the procuring entity may choose to procure the subject matter of procurement by the method of two-stage bidding, if, it is not feasible for the procuring entity to formulate detailed specifications or identify specific characteristics for the subject matter of procurement without receiving inputs from bidders; or the character of subject matter of procurement is subject to rapid technological advances or market fluctuations; or the procuring entity seeks to enter into a contract for the purpose of research, experiment, etc.; or the bidder is expected to carry out a detailed survey or investigation and undertake a comprehensive assessment of risks, cost and obligations associated with the particular procurement. It further provides that the procedure for two-stage bidding shall include such as, in the first-stage of bidding process, the procuring entity shall invite bids containing the technical aspects and contractual terms and conditions without a bid price; all first-stage bids which are otherwise eligible, shall be evaluated in accordance with the

procedure through an appropriate committee; the committee may hold discussions with the bidders and equal opportunity shall be given to all bidders to participate in the discussions; in revising the relevant terms and conditions of the procurement, there shall be no modification of the fundamental nature of the procurement; in the second-stage of the bidding process, invitation of bids shall be made from all those bidders whose bids at the first stage were not rejected, to present final bid; any bidder invited to bid but not in position to supply the subject matter of procurement due to modification in the specifications or terms and conditions, may withdraw from the bidding proceedings without forfeiting any bids security, by declaring his intention to withdraw from the procurement proceedings with adequate justification.

Clause 34.—This clause provides that the procuring entity may choose to procure a subject matter of procurement by the method of electronic reverse auction, if, it is feasible for such entity to formulate a detailed description of such procurement; there is a competitive market of bidders anticipated to be qualified to participate in auction; and the criteria to be used by the procuring entity in determining the successful bid are quantifiable and can be expressed in monetary terms. It further provides that the procedure for electronic reverse auction shall include, *inter alia*, the procuring entity shall solicit bids through an invitation to be published or communicated, etc., the invitation shall also include details relating to access to and registration for the auction; opening and closing, norms for conduct, of the auction.

Clause 35.—This clause lays down the conditions for use of and major features of the procedure for the methods of request for quotations and spot purchase. It provides, *inter alia*, that these methods would be used for procurements of value below a monetary value that may be specified in the rules, in the case of procurement of readily available goods that are not specifically produced and for which there is an established market; or physical services that are not specifically provided to the particular description and are readily available in the market; or procurement of any goods or works or services which are urgently required for maintenance and emergency repairs. It further provides that the procedure for request for quotations shall include provisions such as, quotations shall be invited from as many potential bidders as practicable; each bidder shall be permitted to give only one quotation; and the successful quotation shall be the lowest priced quotation meeting the needs of the procuring entity. It also empowers the procuring entity to adopt the method of spot purchase through a purchase committee.

Clause 36.—This clause lays down the conditions in which a Central Purchase Organisation or a procuring entity may enter into a framework agreement or a rate contract and provides that the manner in which framework agreements and rate contracts are to be established and the manner in which procurement contracts are to be entered into using framework agreements and rate contracts, would be specified in the rules. It also provides that framework agreements and rate contracts may be entered into on the basis of open competitive bidding or by means of other procurement methods in accordance with the proposed legislation.

Clause 37.—This clause enables the Central Government to specify additional conditions for the use of any of the methods of procurement, consistent with the principles of transparency and accountability.

Clause 38.—This clause requires the setting up and maintenance of a Central Public Procurement Portal accessible to the public for posting and exhibiting matters relating to public procurement. It lays down that each procuring entity shall place on the portal procurement related information as required under the proposed legislation and the rules. This clause also specifies the information relating to procurements that is required to be provided on the portal such as, pre-qualification document, bidder registration document, bidding document and any modification or clarification thereto; list of bidders that presented bids; list of bidders excluded with the reasons thereof; decisions taken during the process of grievance redressal; details of successful bids, their prices and bidders; names and the particulars of bidders who have been debarred. It also provides the information exhibited shall be available on the portal, etc.

Clause 39.—This clause requires a procuring entity to maintain a record of procurement proceedings and specifies the information that is to be mandatorily kept record of. It further provides that any document, notification, decision or other information generated in the course of a procurement and communicated as required by the proposed legislation (including the grievance redressal proceedings) relating to the course of a meeting, or forming part of the record of the procurement process, which may be used for subsequent reference, shall be maintained. It also provides for the period for retention of records after expiry of the procurement contract, for the purposes of audit, etc., to be specified in the rules.

Clause 40.—This clause enables an aggrieved bidder or prospective bidder to make an application for review of any decision, action or omission of the procuring entity. The application is to be made within a period of ten days or such other period as may be specified in the pre-qualification, registration or bidding document. It further provides that the official before whom the application for review has to be addressed shall be indicated in the pre-qualification document, bidder registration document, or bidding document, as the case may be. It also enables the procuring entity to suspend the procurement process pending disposal of the application. It also provides that the procuring entity shall dispose of such an application within a period of thirty days or such other period as may be specified in the pre-qualification, registration or bidding document and provide appropriate relief to the applicant and communicate its decision to him.

Clause 41.—This clause provides for constitution of independent procurement redressal committees to consider the grievances of bidders or prospective bidders who are aggrieved by any decision of the procuring entity on an application under clause 40 or who do not get a decision from the procuring entity on an application under that clause within the specified time period. It further provides that the Central Government shall constitute one or more independent procurement redressal committees. It also provides that such committees shall consist of not less than three members including its chairperson who shall be a retired Judge of a High Court. It also provides that the members of the committee shall have proven integrity and experience in public procurement and experience at senior level in public administration or finance, etc., and that the chairperson and members of the committee are to have a term of three years and would be paid a sitting fee and other allowances as per rules. It also provides that on receipt of an application the committee shall hear the applicant and the procuring entity, and determine whether the procuring entity has complied with the provisions of the proposed legislation, the rules and the terms of the pre-qualification, registration or bidding document. It also provides that the committee shall follow the principle of natural justice and that no information which shall impair the protection of national security or impede the enforcement of law, etc., shall be disclosed in the proceeding. It also enables the committee to recommend the suspension of the procurement process pending disposal of the application. It also requires the committee to deal with the application expeditiously, preferably within a period of thirty days or for sufficient reasons within a further period of fifteen days and make its recommendations on the action to be taken by the procuring entity or the applicant. It also provides that on receipt of the recommendation, the procuring entity shall communicate its decision within a total period not exceeding thirty days, and with reasons, if the recommendation is not accepted.

Clause 42.—This clause specifies the matters, such as, determination of need of procurement; provisions limiting participation of bidders in the procurement process; the decision to enter into negotiations; cancellation of procurement process; and applicability of the provisions on confidentiality, under the provisions of the proposed legislation, on which an application for review under clause 40 or an application under clause 41, cannot be filed.

Clause 43.—This clause enables the Central Government to prescribe professional standards to be achieved by officials dealing with procurement matters under the proposed legislation and specify suitable training and certification requirements for the same.

Clause 44.—This clause provides for penalty for taking gratification or valuable thing in respect of public procurement by a public servant. It provides that a public servant acting in connection with any procurement process, who accepts or agrees to accept or obtains or attempts to obtain from any person, for himself or for any other person, any gratification or any valuable thing without consideration or for a consideration which he knows to be inadequate, in connection with such public procurement, as a motive or reward, for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official duties, favours to any person or rendering or attempting to render any service or disservice to any person, shall be punishable with imprisonment which shall be not less than six months but which may extend to five years and shall also be liable to fine.

Clause 45.—This clause provides for penalty for interference with procurement process. It provides that whoever interferes with or influences any procurement process or engages in any action or lobbying or any form of bid rigging or collusive bidding or influences any procuring entity or its official or wilfully or fraudulently makes any assertion or representation, with the intention of securing wrongful gain or undue advantage or causing any unfair disadvantage to a bidder or prospective bidder or unduly restricting fair competition shall be punishable with imprisonment for a term which may extend to five years and shall also be liable to fine which may extend to ten per cent., of the assessed value of procurement. It also provides for similar punishment for engaging a former official of a procuring entity as an employee, director, consultant, etc., within a period of one year after such former official was disassociated with a procurement in which the employer has an interest and for breaching confidentiality provisions of clause 28 for undue gain.

Clause 46.—This clause provides that whoever makes any vexatious, frivolous or malicious complaint with the intention of delaying or defeating any procurement or causing loss to any procuring entity or any other bidder, shall be punishable with fine which may extend to five per cent. of the value of procurement.

Clause 47.—This clause contains provisions relating to offences by companies. It provides that where an offence under the proposed legislation has been committed by a company, every person who at the time the offence was committed was in charge of and was responsible for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of having committed the offence and shall be liable to be proceeded against and punished accordingly. It further provides that if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such an offence, he shall not be liable to any punishment provided in the proposed legislation. It also provides that where an offence has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. It also provides an *Explanation* to explain the terms of company and director.

Clause 48.—This clause provides for punishment for abetment of offences. It provides that whoever abets any offence punishable under the proposed legislation, whether or not that offence is committed in consequence of that abetment, shall be punishable with the punishment provided for the said offence.

Clause 49.—This clause contains provisions relating to debarment of bidders. It provides for debarment by the Central Government if a bidder is convicted of an offence (i) under the Prevention of Corruption Act; or (ii) under the Indian Penal Code or any other law for the time being in force, for causing any loss of life or property or causing a threat to public health as part of execution of a public procurement contract. It also provides that a bidder debarred by the Central Government shall not be eligible to participate in a procurement process of any procuring entity for a period of three years commencing from the date of debarment. It also specifies the circumstances in which a bidder may be debarred by a procuring entity for a period not exceeding two years. It also provides that the Central Government or a procuring entity shall not debar a bidder under this clause unless he has been given a reasonable opportunity to represent against it.

Clause 50.—This clause contains provisions relating to previous sanction necessary for prosecution of a public servant. It provides that no court shall take cognizance of an offence punishable under the proposed legislation, alleged to have been committed by a public servant during the course of his employment, except with the previous sanction of the Central Government (in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government) or of the authority competent to remove him from his office.

Clause 51.—This clause provides that every official of a procuring entity or any member of a committee constituted under the proposed legislation, acting under or in pursuance of the proposed legislation shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

Clause 52.—This clause relates to protection of action taken in good faith and provides that no suit, prosecution or other legal proceedings shall lie against any officer or any other employee acting under the proposed legislation for anything which is in good faith done or intended to be done under the proposed legislation or the rules made thereunder.

Clause 53.—This clause provides that the provisions of the proposed legislation shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.

Clause 54.—This clause provides that any sum payable by any person under the proposed legislation shall be recoverable as arrears of land revenue.

Clause 55.—This clause specifies the manner in which notices, documents and orders will be served on any individual or on a body corporate.

Clause 56.—This clause empowers the Central Government to make rules, by notification in the Official Gazette, for carrying out the provisions of the proposed legislation. It further specifies the matters for which the Central Government may make rules. It also provides that every rule made by the Central Government shall be laid before each House of Parliament.

Clause 57.—This clause empowers a procuring entity to issue guidelines or instructions consistent with the provisions of the proposed legislation and the rules, for proper implementation of the proposed legislation. It also provides that the guidelines or instructions shall be exhibited on the website of the procuring entity.

Clause 58.—This clause makes provisions for removal of difficulties. It provides that if any difficulty arises in giving effect to the provisions of the proposed legislation, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of the proposed legislation, as may appear to it to be necessary for removing the difficulty. It further provides that such order shall be made within a period of three years from the date of commencement of the proposed legislation and that every order made under this clause shall be laid, as soon as may be after it is made, before each House of Parliament.

Clause 59.—This clause empowers the Central Government to exempt, by order published in the Official Gazette and for reasons to be recorded in writing, any procurement or a class or category of procurements or by a class of procuring entities from the application of any of the provisions of the proposed legislation, if it is satisfied that it is in public interest to do so. It further provides that every such order shall be laid, as soon as may be after it is made, before each House of Parliament.

Clause 60.—This clause provides that all rules, regulations, orders, notifications, etc., relating to procurement of goods, services or works provided for in the proposed legislation, which are in force on the date of commencement of the proposed legislation, shall continue to be in force to the extent they are consistent with the provisions of the proposed legislation, until they are repealed or superseded by any rule, guideline, notification or order made or issued under the proposed legislation.

FINANCIAL MEMORANDUM

Clause 38 of the Bill requires the Central Government to set up and maintain a Central Public Procurement Portal accessible to the public for posting and exhibiting matters relating to public procurement.

2. Clause 41 of the Bill provides for the constitution of one or more independent procurement redressal committees consisting of not less than three members including a retired Judge of a High Court as its chairperson. Sub-clause (7) thereof provides for payment of sitting fees and other allowances to the chairperson and members of the committees.

3. Clause 43 of the Bill provides for the Central Government to prescribe professional standards to be achieved by officials dealing with procurement matters and to specify suitable training and certification requirements for the same.

4. At this stage, it is not possible to give precise details of the expenditure to be incurred on account of the aforesaid provisions. It is, however, expected that the Bill, if enacted and brought into operation, would involve non-recurring expenditure of twenty crore rupees and a recurring expenditure of ten crore rupees in a financial year. The expenditure shall be met from the Consolidated Fund of India.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clause (1) of clause 56 of the Bill empowers the Central Government to make rules, by notification, to carry out the provisions of the proposed legislation.

2. Sub-clause (2) of clause 56 specifies the matters in respect of which such rules may be made. These matters, *inter alia*, include (i) procurements and procuring entities not covered under the proposed legislation, namely, any procurement, the estimated cost of which is less than fifty lakhs rupees or such higher value as may be specified by the Central Government; emergency procurement necessary for the management of any disaster and procurement for the purposes of national security or on strategic considerations, (ii) different sets of rules for different procuring entities and procurements, (iii) code of integrity, (iv) matters to be decided while determining need for procurement, (v) guidelines for drawing up the description of the subject matter of procurement, (vi) timeframe for various stages of the process of procurement, (vii) circumstances in which participation of bidders may be limited, (viii) qualifications to be fulfilled by bidders, (ix) form and manner of the declaration to be submitted by the bidder in regard to certain qualifications, (x) manner of giving wide publicity while inviting offers to pre-qualify, (xi) manner and procedure for pre-qualification, (xii) manner of giving wide publicity while inviting offers to register and the procedure for registration, (xiii) content of bidding documents, (xiv) conditions of bidding document and model of bidding documents, (xv) manner of calling for bids for offsets, (xvi) procedure for submission of bids, bid securities, modification and withdrawal of bids, opening and evaluation of bids, (xvii) evaluation criteria, (xviii) manner of maintenance of records of trials and testing, (xix) identification and treatment of conflict of interest, (xx) circumstances and conditions for price negotiations, (xxi) terms of award of contract, (xxii) terms and conditions of procurement contracts, (xxiii) procurement using framework agreements and rate contracts, (xxiv) electronic procurement, (xxv) procedures in respect of method of procurement, (xxvi) manner of giving wide publicity to invite bids, (xxvii) monetary value for procurement through request for quotations and spot purchase, (xxviii) procedure for framework agreements and rate contracts, (xxix) procurement related information to be exhibited on the Central Public Procurement Portal, (xxx) information or record of procurement proceedings required to be maintained, (xxxii) period of retention of documentary record, (xxxii) the form, manner and the fee for application for grievance redressal, (xxxiii) sitting fee and other allowances payable to chairperson and members of procurement redressal committee, (xxxiv) professional standards, training and certification for officials dealing with procurement matters.

3. The rules made by the Central Government are to be laid before each House of Parliament.

4. The matters in respect of which rules may be made or notification issued in accordance with the aforesaid provisions of the Bill are matters of procedure and administrative details and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

T. K. VISWANATHAN,
Secretary-General.